
Appendix A
Agreements

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STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
STANDARD UTILITY LETTER AGREEMENT
(Sample for reference only)

DATE

VIA EMAIL

"Enter name of addressee"
"Enter Title of addressee"
"Enter company of addressee"
"Enter Address 1"
"Enter Address 2"
"City, State, Zip"

RE: LETTER AGREEMENT, RELOCATION AND ADJUSTMENT UNDER
STATE CONTRACT NO. TXXXXXXXX
F.A.P. NO.: XXXX-XXXX(XX)
PROJECT ID NO. XX-XXXXX
"ENTER LOCATION"
"ENTER COUNTY"

Dear "Enter Name of Address (Mr. or Ms.)",

This letter constitutes an **AGREEMENT** between the **Department of Transportation of the State of Delaware**, hereinafter designated as "STATE", and "Enter Company Name", hereinafter designated as "UTILITY". The subject of this **AGREEMENT**, as hereinafter set forth, shall sometimes be referred to as the "PROJECT". **STATE** and **UTILITY** shall sometimes be referred to herein collectively as the "Parties" or individually as a "Party".

In consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

Description of Utility Facilities

The **UTILITY** maintains facilities within the **PROJECT** limits as described in **Exhibit 'A'**, attached hereto and made a part hereof.

Reimbursable Work

In accordance with its Master Franchise Agreement, the Delaware Utility Manual Regulations, and the Delaware Code, the **UTILITY** understands it is obligated to relocate those portions of its facilities in conflict with proposed roadway, bridge and related transportation infrastructure improvements, including, but not limited to, signals, signage, lighting, sidewalks, pathways, at its sole expense, subject at all times to the following exceptions provided in Delaware Code and case law when **UTILITY** facilities are:

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"Agreement Number"

(Check all that apply)

- Located outside of **STATE** rights-of-way on privately held land or easement [*Del. Power & Light Co. v. Terry*, 194 A.2d 553 (Del. Ch. 1963)]
- Prior Rights [*Del. Power & Light Co. v. Terry*, 194 A.2d 553 (Del. Ch. 1963)]
- Located within the limits of **STATE** projects funded at least 90% by the federal government [17 Del. C §132 (b) (5)]
- Owned by a municipality or of any governmental body or political subdivision of the State of Delaware [17 Del. C. §143 (b)]
- Part of a major economic development project, recovery from natural disaster, or compelling benefit to the traveling public – eligible for up to 50% reimbursement only upon approval by Department Secretary. [17 Del. C. §143 (c) and (d)]
- Required to be made from unique materials and/or require storage in advance of the **STATE** project [17 Del. C. §143 (e)]
- Required to be relocated in advance of the **STATE** project [17 Del. C. §143 (f)] where the **STATE** agrees to reimburse the **UTILITY** for increased expenses incurred as a result of the advanced move, including, but not limited to, expenses for the maintenance of traffic, tree and vegetation removal, grubbing, grading, test holes, and surveying.
- Required to be moved a second time within 10 years of a previous **STATE** project [17 Del. C. §143 (g) (1) a.]
- Required to be altered or relocated due to the **STATE** altering its plan of construction for the **PROJECT** at any time before its completion in a manner that requires the public utility to alter or relocate its facility that has already been fully or partially altered or relocated in connection with the **PROJECT** [17 De. C. §143 (g) (1) b.]
- Required to relocate temporarily [17 Del. C. §143 (g) (1) d.]
- Required to be enhanced for public benefit and convenience such as net costs savings or expediting the completion schedule of the **STATE** project [17 Del. C. §143 (j)]

The Parties hereto agree, for the specific facilities described in **Exhibit ‘B1’**, under the exception(s) checked above, the **STATE** agrees to pay the appropriate, allowable and actual expenses associated with the relocation and/or adjustment of the **UTILITY’s** facilities to conform to the **PROJECT**, meaning the cost to the **UTILITY** properly attributable to such relocation and/or adjustment after deducting any increase in the value of the new or adjusted facilities and any salvage value derived from the old facilities.

The Parties hereto agree, for the specific facilities described in **Exhibit ‘B2’**, under the circumstance checked below, the **UTILITY** agrees to pay to the **STATE** the appropriate, allowable and actual expenses associated with the relocation and/or adjustment of the **UTILITY’s** facilities when the **UTILITY** facilities are:

(Check if applicable)

- To be included in a **STATE** construction contract and constructed by the **STATE’s** contractor or subcontractor instead of the **UTILITY**
- J-funds – Work being done by the **STATE’s** contractor that is reimbursable to the **STATE**. This includes a Betterment (upgrade to a facility) for public utility companies (Municipalities) and any work not reimbursable to a private utility where they are required to reimburse the **STATE** because they are located within the **STATE’s** right-of-way. [17 Del. C. §143 (h)]

Itemized relocation costs eligible for reimbursement by the **STATE** to the **UTILITY** under this **AGREEMENT** as a result of the **PROJECT** are described as depicted on **Exhibit ‘C1’**, attached hereto and made a part hereof.

Itemized relocation costs eligible for reimbursement by the **UTILITY** to the **STATE** under this **AGREEMENT** as a result of the **PROJECT** are described and depicted on **Exhibit ‘C2’**, attached hereto and made a part hereof.

Prior Rights

When applicable, the **UTILITY** is determined to have legally occupied private property, typically in the form of a private easement designated as the “**PROPERTY**”, as described in **Exhibit ‘C3’**, prior to the time the property was conveyed to or acquired by the **STATE**. As part of this **AGREEMENT**, the **UTILITY** hereby conveys all of its rights in the **PROPERTY** that is impacted by acquisition associated with the **PROJECT** in exchange for the right of compensation should the **UTILITY** facilities described in **Exhibit ‘C4’** need to be relocated again due to future **STATE** projects.

- a. If determined to be applicable, a summary of prior rights will be included within **Exhibit ‘C4’** and will entitle the **UTILITY** to compensation for the actual costs of one future alteration, adjustment, or relocation, to each component of the **UTILITY**’s facilities as described within said **Exhibit ‘C4’**, resulting from future **STATE** projects.

To claim the rights held under this prior rights portion outlined by **Exhibit ‘C4’** of the **AGREEMENT**, it shall be the **UTILITY**’s responsibility to furnish an official signed copy of this **AGREEMENT** to the **STATE** during the design phase of future **STATE** projects.

Non-Reimbursable Work

For tracking and documentation purposes, the relocation work not eligible for reimbursement at the time of execution of this **AGREEMENT** by the **STATE** to the **UTILITY** as a result of the **PROJECT** is described and depicted on **Exhibit ‘D’**, attached hereto and made a part hereof. In accordance with 17 Del. C. §143 (g) (1) c., should the **STATE** cancel or otherwise fail to commence the **PROJECT** within 2 years of the date of authorization of the relocation work the costs documented in **Exhibit ‘D’**, the sufficiency of which is hereby acknowledged, shall become reimbursable to the **UTILITY** by the **STATE**. The **UTILITY** shall keep cost records contemporaneously with the non-reimbursable work and modify **Exhibit ‘D’** accordingly at the conclusion of the work as a change order under the terms of this **AGREEMENT**. The **STATE** will only consider, and will only accept for payment, those costs so documented.

Any relocation work not shown or otherwise not specifically described herein and shown as reimbursable in **Exhibits ‘B’** and **‘C’**, shall be construed as non-reimbursable under the **AGREEMENT** unless the Parties have executed a written and signed amendment to this **AGREEMENT**.

Construction Schedule

The anticipated construction schedule for the **STATE** project and for the **UTILITY** work contemplated under this agreement, both reimbursable and non-reimbursable, is described in **Exhibit ‘E’**.

Accommodation within STATE Rights-of-Way

The **STATE** shall make sufficient rights-of-way available to the **UTILITY** to accommodate the relocation of its facilities within the **STATE** rights-of-way, including temporary construction easements necessary for the installation of the **UTILITY** facilities, as well as permanent easements or rights-of-way needed for the maintenance of the **UTILITY** facilities.

Such property rights shall be acquired by the **STATE** at its expense only after coordination between the Parties to minimize the footprint and impact to adjacent owners while meeting the mutual needs of the Parties. Accommodation of the **UTILITY** facilities within **STATE** rights-of-way and easements shall be subject at all times to the requirements found in the Delaware Utility Manual Regulations in effect as of the date of execution of this **AGREEMENT**, as such requirements relate to the placement of such **UTILITY** facility.

The rights-of-way acquired under the **PROJECT** and the proposed location of the **UTILITY** facilities within such rights-of-way are depicted on the **PROJECT** plans, incorporated by reference hereto and made a part hereof.

Ingress & Egress

To the extent the **UTILITY** must maintain access to remnant parcels owned by the **UTILITY** from the **PROJECT** limits, the **STATE** will approve entrances at locations mutually acceptable to both the **UTILITY** and the **STATE**, which approval shall not be unreasonably withheld or conditioned, affording each party sufficient access to its property as needed to carry out its business.

Acceptance of Payment as Settlement of all Claims

The **UTILITY** agrees that acceptance of final payment by the **STATE** made pursuant to this **AGREEMENT** shall constitute full and fair compensation of all claims, damages of any kind, actions, causes of action, suits, rights, demands, losses, debts, penalties, fees, wages, expenses, attorneys' fees, or costs known or unknown, which either Party has, or may have had, against the other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from the **PROJECT**.

Preparation of Plans, Specifications and Cost Estimates

The **STATE** shall prepare plans of the **PROJECT**, and furnish advance copies of the plans to the **UTILITY**. The plans shall be supplied by the **STATE** in the formats requested by the **UTILITY**, either hard copy or electronic file, or as they are available.

The **UTILITY** shall prepare plans, specifications, and estimates of the expense for the relocation and/or adjustments of the **UTILITY** facilities caused by the **PROJECT** and shall submit the same to the **STATE**, through the **STATE's Utilities Engineer** for the **STATE's** review and approval pursuant to the terms and conditions of this **AGREEMENT**.

All plans, specifications and estimates of expenses submitted by the **UTILITY** shall be prepared in accordance with, and shall be subject to, the applicable conditions and stipulations set forth in **US DOT, Federal Highway Administration, Federal Aid Policy Guide (FAPG), 23 CFR, Part 645, Section 645.115 Construction**, and all amendments thereto, in effect as of the date of this **AGREEMENT**. All plans shall show clearly the existing facilities as well as the work contemplated by this **AGREEMENT**. All estimates of expense for the work shall set forth the items of work to be performed in sufficient detail to provide a reasonable basis for analysis and shall indicate all credits for the value of salvage, betterment and, if applicable, expired service life.

Buy America

All work to be performed under this **AGREEMENT** shall conform to all applicable state and federal laws, rules and regulations, including all the requirements and provisions of Buy America, United States Code Title 23 Part 313 and CFR Title 23 Part 635.410.

Time is of the Essence

The Parties hereto agree to abide by the response times as stipulated in the Delaware Utility Manual Regulations.

Design phase submissions will be made to the **UTILITY** by the **STATE** at the various phases of plan development. The **UTILITY** shall return requested information to the **STATE** within 30 days of receipt unless a later date is agreed upon by the appropriate representatives of each Party.

Construction time frames and dates in the schedules are of the essence, unless the context clearly and unequivocally allows otherwise. The Parties will notify each other promptly of any circumstances that may adversely affect the construction schedules, specifying the causes of delay and expected duration of it, as well as all proposed measures to reduce the delay as much as practicable.

Notice to Proceed with Relocation Work

The **UTILITY** shall not proceed with any relocation, maintenance of traffic, or other construction related work on the **PROJECT** unless it shall first obtain prior written approval from the **STATE** in the form of a **Notice to Proceed**, which approval shall not be unreasonably conditioned or delayed. Upon orders from the **STATE**, the **UTILITY** shall proceed to perform the work described in the approved plans, specifications, and estimates. If such work is to be performed by contract, the **UTILITY** shall let the contract in accordance with the applicable provisions of **US DOT, Federal Highway Administration, Federal-Aid Policy Guide (FAPG), 23 CFR, Part 645, Section 645.115 Construction**, and the payments to be made by or to the **STATE** shall be subject to the conditions and limitations as set forth therein.

Cooperation and Coordination of Work

The **UTILITY** shall cooperate with the **STATE's** contractor in performance of its work so that the **PROJECT** will not be impeded. The **UTILITY** shall perform its work in accordance with the provisions of the **STATE's "Standard Specifications"**, and all amendments thereto in effect at the time the work is performed. Additionally, the **STATE** and the **STATE's** contractor shall cooperate with the **UTILITY** to allow necessary relocation work to be performed in accordance with this **AGREEMENT**.

Protection as specified in the **Delaware Manual on Uniform Traffic Control Devices for Street and Highway Construction and Maintenance Operations**, and all amendments thereto, in effect at the time the work is performed, shall be provided for by the **UTILITY** unless otherwise agreed upon by the appropriate representatives of each Party.

Change Orders

The work and costs contemplated under this **AGREEMENT** are captured in the **Exhibits** attached hereto. The **Exhibits** may be modified by the Parties to accommodate changes required during the life of the **PROJECT** necessary to complete the work. An authorized representative of each Party, by initialing and dating the modified **Exhibit**, acknowledges and accepts the modified **Exhibit** as sufficient documentation of their agreement with the proposed change to the terms of the **AGREEMENT**. The most recent version of each **Exhibit**, so initialed and dated,

shall be deemed the official **Exhibit** for payment purposes under this **AGREEMENT**.

Notice of Claim

“Claim” means a written demand or assertion by either Party seeking, as a legal or equitable right; payment of money, adjustment or interpretation of **AGREEMENT** terms, or other relief.

Each Party shall immediately notify the other in writing or by electronic mail of intention to make a claim under this **AGREEMENT**.

No further work shall be performed or costs incurred without the other Party being afforded the opportunity to first review and observe the changed condition to assess whether work may proceed. The other Party shall promptly review the claim so as to not delay the prosecution of the work.

Within five (5) business days of the initial notification, the claiming Party shall provide to the other Party the following information in writing:

1. The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change or basis of the claim.
2. The name, title, and activity of each Party’s representative knowledgeable of the alleged change or basis of the claim.
3. Copies or descriptions of any documents and the substance of any communications involved in the alleged change or claim and the basis of an alleged Schedule change, if applicable.
4. The basis for an allegation that the work is not required by the **AGREEMENT**, if applicable.
5. The particular elements of **AGREEMENT** performance for which additional compensation may be sought including:
 - a. Plan changes that have been or may be affected by the alleged change or claim
 - b. Schedule delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change or claim.
 - c. The claiming Party’s contractor and/or subcontractor claims for adjustment under the **PROJECT** resulting from the changed condition, if applicable.
 - d. Materials that were/will be added, deleted, or wasted by the alleged change or claim.
 - e. Equipment costs that was/will be idled or increased by the alleged change or claim.
 - f. Labor costs that was/will be idled or increased as a result of the alleged change or claim.
 - g. Estimated adjustments to material price(s), delivery schedules(s), staging, and storage time necessary due to the alleged change or claim.
 - h. Estimate of the time within which the other Party must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of either Party to provide required notice in accordance with this **AGREEMENT** shall constitute a waiver of any and all entitlement to additional compensation as a result of the alleged change or claim.

Enforcement

The Parties hereto agree that in the event of the **UTILITY**'s noncompliance with the provisions of the **AGREEMENT** due solely to the actions or inactions of **UTILITY** and not based upon events or circumstances outside of its control, the **STATE** may impose such reasonable contract sanctions as it may deem appropriate, including, but not limited to, withholding of reimbursement payments; withholding **STATE** issued utility construction permits being sought by the **UTILITY** in other locations on **STATE** roadways until the **UTILITY** complies; or seeks compensation for damages resulting from said noncompliance.

The Parties also hereto agree that in the event of the **STATE**'s noncompliance with the provision of this **AGREEMENT** due solely to the actions or inactions of the **STATE** or the **STATE**'s contractor, the **UTILITY** may seek additional reimbursement for the actual costs resulting from and attributable to said noncompliance and which may otherwise have been non-reimbursable.

Insurance Requirement

1. The **UTILITY** agrees to carry sufficient insurance (or have its contractor carry sufficient insurance) for the **PROJECT** as required by the **STATE**. The **UTILITY (or its contractor)** shall pay all costs of said insurance. The **UTILITY** shall maintain the following insurance during the term of this **AGREEMENT**:
 - A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
 - B. Commercial General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
 - C. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, or
 - D. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, or
 - E. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
 - F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
2. The **STATE** must be named a certificate holder on each of the certificates of insurance named above. The insurance company shall be authorized to do business in the State of Delaware. The **UTILITY** shall provide the **STATE** with thirty (30) days written notice in the event any policy is cancelled or not renewed. Nothing contained in this section shall be construed as limiting or otherwise altering **UTILITY**'s obligation to indemnify the **STATE** due to the **UTILITY**'s the **UTILITY**'s agents, assignees, servants, or employees negligence.
3. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

Indemnification

The **UTILITY** shall indemnify and save harmless the **STATE of Delaware** and its agencies, its officer, agents, employees, assigns, servants and the like from all suits, actions or claims of any character, whatsoever, brought because of any injuries or damage received or sustained by any persons or property on account of the work of the **UTILITY**, its officers, agents, employees, assigns, independent contractors, or the like undertaken within the scope of this **PROJECT**.

Should the **UTILITY** choose to hire a contractor to complete the work, the **UTILITY** shall cause to have its contractors indemnify and save harmless the **STATE** from and against all claims, demands and causes of actions of every kind and character arising in favor of the contractors' employees or third party on account of personal injuries or death or damages to property, which may arise out of the exercise of this **AGREEMENT**.

In addition, should the **UTILITY's** work be included in the **STATE** contract and be performed by the **STATE's** contractor or subcontractor, the **STATE** shall cause to have its contractors indemnify and save harmless the **UTILITY** from and against all claims, demands and causes of actions of every kind and character arising in favor of the contractors' employees or third party on account of personal injuries or death or damages to property, which may arise out of the contractors' negligence or willful misconduct.

Maintenance

Upon completion of the relocation and/or adjustments, the **UTILITY** shall thereafter maintain said installation in accordance with accepted industry standards and all applicable laws, rules and regulations including the Delaware Utility Manual Regulations.

Invoicing and Payment

Within six (6) months from the last chargeable day of the **PROJECT**, the **UTILITY** shall submit to the **STATE** a final bill in detail and based on work order accounting, for the expense for the relocation work performed. The billing shall conform to the applicable provisions of **US DOT, Federal Highway Administration, Federal-Aid Policy Guide (FAPG), 23 CFR, Part 645**. The final invoice shall specify "final" and contain a summary of total project costs performed. **STATE** shall reimburse **UTILITY** for the costs incurred under this **AGREEMENT** within 90 days of the submission of final invoices to **STATE**. In the case of betterment to the **UTILITY's** system or when the **STATE** has performed any other work on behalf of the **UTILITY** that requires reimbursement to the **STATE**, the **STATE** shall submit to the **UTILITY** a single and final bill for the betterment cost thereof. Upon expiration of the aforementioned time period, the project's administrative documents shall be closed out and funds terminated within one (1) year of the last chargeable day of the **PROJECT**.

The **UTILITY** shall submit a certification of Buy America compliance with the final invoice. Final payment will not be made by the **STATE** if the certification is not received.

Records Retention

The **UTILITY** must retain all books, documents, papers, accounting records and any other material pertaining to cost incurred under this **AGREEMENT** for a minimum of three (3) years after final payment by the **STATE** and shall make such material available upon written request for inspection and audit by the **STATE**.

Similarly, the **STATE** must retain all books, documents, papers, accounting records and any other material pertaining to cost incurred under this **AGREEMENT** for a minimum of three (3) years after final payment and shall make such material available upon request for inspection and audit by the **UTILITY**.

Civil Rights Requirements

All work to be performed under this **AGREEMENT** shall conform with all applicable state and federal laws, rules and regulations, including all the requirements of **Title VI of the Civil Rights Act of 1964** and **Implementing Regulations** issued by the **Department of Transportation**, attached hereto as **Exhibit 'F'**. The **UTILITY** agrees that these provisions shall apply to it and/or and subcontractor(s).

If the **UTILITY** elects not to perform any portion of the relocation work under this **AGREEMENT** with its own forces but to enter into a contract or agreement with a contractor to perform the relocation work, the **UTILITY** covenants that it will not discriminate on the grounds of race, color, religion, sex, and national origin in the selection or retention of such contractor or similar person, and shall include in the contract or agreement with the contractor or similar person the provision as set forth in **Exhibit 'F', Civil Rights Act of 1964**.

Entire Agreement

This **AGREEMENT** embodies and constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements between the Parties with respect to the transaction contemplated hereby. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions herein set forth and that no modification of this **AGREEMENT** and no waiver of any of its terms and/or conditions shall be effective unless made in writing and duly executed by the parties hereto. This **AGREEMENT** may not be altered, changed or amended except by an instrument in writing, executed by the Parties.

Interpretation

The fact that one Party has drafted certain provisions of this **AGREEMENT** shall in no way be used against that Party in construing the terms, conditions and obligations hereunder and all Parties acknowledge that each Party has had the opportunity to participate in drafting this **AGREEMENT**.

Captions and Headings

Captions and headings are for convenience of reference only and shall not be used to interpret the provision for this **AGREEMENT**.

Severability

If any one or more of the provisions contained in this **AGREEMENT** shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this **AGREEMENT** shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Termination

The **STATE** may cancel this **AGREEMENT** by written notification to the **UTILITY**, at any time prior to notification to the **UTILITY** to proceed with its work, in which event the **STATE** shall compensate the **UTILITY** for the total expenses incurred by the **UTILITY** as of the date of notification of termination.

Notice

Any notice pursuant to this **AGREEMENT** shall be conclusively deemed to have been received by a Party hereto and to be effective on the date of confirmed delivery to such Party sent by electronic mail set forth below:

DelDOT: Delaware Department of Transportation
Attention: Becky Patchett, Administrative Officer, Utilities Section
Email: rebecca.patchett@delaware.gov

Name of Utility: "Enter company of addressee"
Attention: "Enter name of addressee"
Email: "Enter email of addressee"

Choice of Law

This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Delaware. **UTILITY** consents to jurisdiction and venue in the State of Delaware.

Manner of Execution

This **AGREEMENT** may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument. Facsimile or pdf signatures shall be deemed original signatures.

Representative Capacity

Each person executing this **AGREEMENT** in a representative capacity represents and warrants that he or she is empowered to do so.

-----Signature Page Follows-----

The signature of the undersigned constitutes the **STATE's** consent to and endorsement of the provisions of this **AGREEMENT**. An official signature of the representative for **UTILITY** when affixed hereinafter, shall constitute your agreement to the terms and conditions contained herein.

ATTEST

**DELAWARE DEPARTMENT OF
TRANSPORTATION**

Charlanne Clymer
Director, Finance

Nicole Majeski
Secretary of Transportation

ATTEST

APPROVED FOR:
"Enter Company Name"

"Enter name of addressee"
"Enter Title of addressee"

Attached: Exhibit 'A' – Description of Existing **UTILITY** facilities within project limits
Exhibit 'B1' – Description of work reimbursable to the **UTILITY**
Exhibit 'B2' – Description of work reimbursable to the **STATE**
Exhibit 'C1' – Itemized cost estimate of work reimbursable to the **UTILITY**
Exhibit 'C2' – Itemized cost estimate of work reimbursable to the **STATE**
Exhibit 'C3' – **UTILITY** private easements or property description documents
Exhibit 'C4' – List of **UTILITY** facilities in area of Prior Rights
Exhibit 'D' – Description of non-reimbursable **UTILITY** work
Exhibit 'E' – **STATE** and **UTILITY** construction schedule
Exhibit 'F' – Civil Rights Act of 1964

DelDOT Form Control No. 2016-01

"Agreement Number"

Exhibit A

Description of existing **UTILITY** facilities within project limits

Exhibit B1

Description of work reimbursable to the **UTILITY**

Exhibit B2

Description of work reimbursable to the STATE

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"Agreement Number"

Exhibit C1

Itemized cost estimate of work reimbursable to the **UTILITY**

Exhibit C2

Itemized cost estimate for work reimbursable to the STATE

Exhibit C3

UTILITY private easements or property description documents

Exhibit C4

List of UTILITY facilities in area of Prior Rights

Exhibit D

Description on non-reimbursable **UTILITY** work

Exhibit E

STATE and UTILITY construction schedule

Exhibit F

Civil Rights Act of 1964

Agreement, Relocation and Adjustment
Department of Transportation, Division of Transportation Solutions, Engineering
Support, Utilities

2 pages

COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND IMPLEMENTING REGULATIONS ISSUED BY THE DEPARTMENT OF TRANSPORTATION

During the performance of this Agreement, here-in-after sometimes referred to as the “contract”, the contractor, in this contract that being the “Utilities”, for itself, its assignees and successors in interest (here-in-after referred to as the “contractor”), agrees as follows:

- 1) COMPLIANCE WITH REGULATIONS: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, Title 49 of the Code of Federal Regulations (CFR), Part 21 (49 CFR, Part 21) as they may be amended from time to time, here-in-after referred to as the Regulations, which are herein incorporated by reference and made a part of this contract.

- 2) NONDISCRIMINATION: The contractor, with regard to the work performed by it during the contract shall not discriminate on the grounds of race, color, religion, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- 3) SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- 4) INFORMATION AND REPORTS: The contractor will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State of Delaware Department of Transportation, or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State of Delaware, Department of Transportation, or the Federal Highway Administration, as appropriate and shall set forth what efforts it has made to obtain the information.
- 5) SANCTIONS FOR NONCOMPLIANCE: In the event of the contractor's noncompliance with the nondiscrimination provisions of the contract, the State of Delaware, Department of Transportation, shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the contractor under the contract until the contractor complies and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
- 6) INCORPORATION OF PROVISIONS: The contractor shall include the provisions of the Exhibit "F" in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor will take such action with respect to any subcontractor or procurement as the State of Delaware, Department of Transportation, or the Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor or supplier as a result of such direction, the contractor may request the State of Delaware to enter into such litigation to protect the interests of the State of Delaware, and in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States and/or the State of Delaware.



Utility Permit

PERMIT ID: XX-XXXX-XXXX

PROJECT NAME :

INSPECTOR:

INSPECTOR PHONE:

INSPECTOR EMAIL:

EMERGENCY

AREA:

FIELD CONTACT:

ADC GRID:

FIELD CONTACT PHONE:

KAPPA GRID:

FIELD CONTACT EMAIL:

COMPANY:

Received

:

Authorized
By:

Issued
On:

Permit
Type:

Expiry
Date:

Permit Site:

Location:

Project
Description:

Dimension:

DeIDOT Authorized Signature :

Signature XXXXX

It is hereby agreed by both parties involved in the granting of this permit that the actual construction or adjustment covered by this permit shall be performed in accordance with the policies and procedures set forth in the Utilities Policies and Procedures Manual, State of Delaware, Division of Maintenance and Operations, in effect on the date of this permit. Work is to be begun within 30 days from the date of this permit and completed with as little delay as possible, the right to work under this permit expires 6 months from the date of issuance; it may be renewed or extended upon application.

The holder of this permit shall indemnify and save harmless the Division of Maintenance and Operations of and from all suits and damages arising from or on account of the construction or operation of its said poles, wire, pipe, conduits, appurtenances, etc. herein permitted on State rights-of-way.

Permittee shall call the Division of Maintenance and Operations Permit Section, (North District – 326-4679, Central District – 760-2444, South District – 853-1340) 24 hours prior to any installation on State rights-of-way.

Traffic Control shall be in accordance with the Delaware Manual on Uniform Traffic Control Devices.



Utility Permit

PERMIT ID: XX-XXXX-XXXX

PROJECT NAME :

Utility Coordinator TRAFFIC CONTROL MUST BE IN ACCORDANCE WITH THE DE. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD-Latest Edition)

CONTACT INSPECTOR 24 HRS IN ADVANCE PRIOR TO ANY WORK.

NO ROAD OPENINGS PERMITTED WITHOUT THE APPROVAL FROM DELDOT

DelDOT Authorized Signature :

Signature XXXXX

It is hereby agreed by both parties involved in the granting of this permit that the actual construction or adjustment covered by this permit shall be performed in accordance with the policies and procedures set forth in the Utilities Policies and Procedures Manual, State of Delaware, Division of Maintenance and Operations, in effect on the date of this permit. Work is to be begun within 30 days from the date of this permit and completed with as little delay as possible, the right to work under this permit expires 6 months from the date of issuance; it may be renewed or extended upon application.

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Traffic Control shall be in accordance with the Delaware Manual on Uniform Traffic Control Devices.

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
PUBLIC UTILITY MASTER FRANCHISE

"ENTER Company" (UTILITY) a privately owned Delaware public utility, its successors, lessees, and assigns, is hereby granted the right, permission and authority to erect, construct, renew, replace, maintain and operate "ENTER what they were approved for from the CPCN or PSC - this will vary for each agreement" utility facilities, together with the necessary fixtures and appurtenances within State's rights of way located in "ENTER County" County, Delaware under and subject to all conditions, restrictions, and regulations of the Department of Transportation (DEPARTMENT), State of Delaware (STATE). The effective date of this Master Franchise (FRANCHISE) shall be the date of execution by the Director of Finance and it shall remain in force for a period of fifty (50) years, unless revoked by the DEPARTMENT in accordance with the terms of this FRANCHISE. Upon expiration of the initial fifty (50) year term, this FRANCHISE shall automatically renew for a fifty (50) year renewal term unless otherwise agreed to by the parties.

Under and by virtue of the power and authority vested in the DEPARTMENT by the provisions of the Delaware Code, Title 17, Chapter 132, Subsection (c) (8) and supplements thereto, the DEPARTMENT orders and directs that the following conditions, restrictions and regulations shall govern the installation of all utility facilities on the STATE'S rights of way.

1. The granting of this FRANCHISE shall in no way operate as an exemption of the holder thereof from any taxes levied or to be levied in accordance with law by the governing body of this STATE, "ENTER County" County or any other regulatory authority.
2. The UTILITY shall indemnify and save harmless the STATE and its agencies, its officers, agents, employees, assigns, servants and the like from all suits, actions or claims of any character, whatsoever, brought because of any injuries or damage received or sustained by any persons, or property on account of the construction or operation of its said Utility facilities and fixtures by the UTILITY, its officers, agents, employees, assigns, independent contractors or the like undertaken within the scope of the permitted work area and arising as a result of the UTILITY'S negligence or willful misconduct.
3. The UTILITY shall perform all construction adjustment or relocation in accordance with the policies and procedures as set forth in Delaware's Administrative Code Section 2401, Utilities Manual Regulations (UTILITY MANUAL), as amended from time to time.

1. The **UTILITY** shall respond immediately to any emergency relating to its fixtures and appurtenances placed pursuant to this **FRANCHISE** that has a direct effect on public safety or impedes the free flow of traffic. Less urgent trouble calls shall be responded to by the **UTILITY** within three hours of being notified of the issue.
2. The **UTILITY** shall, before cutting, spraying or trimming of any tree or shrub within the right of way of any highway in the **STATE**, secure a special use permit from the Department of Transportation District Engineer's Office (**ENGINEER'S OFFICE**) of the district in which the work is to be done, by written application in which are set forth the location, number, kind, and size of trees or shrubs to be cut, sprayed, or trimmed. A representative of the **ENGINEER'S OFFICE** will inspect such proposed work and, if approved, will issue a permit.
3. The **UTILITY** shall comply with all applicable Delaware laws and regulations including but not limited to 26 *Del. C.*, Ch. 8, Delaware's Underground Utility Damage Prevention and Safety Act, and the **UTILITY MANUAL**. At a minimum the **UTILITY** shall participate in an approved one-call notification center, like Miss Utility and 811; field locate its facilities; respond to excavators within the timeframes established by code; and respond to designers within the timeframe established by the **UTILITY MANUAL**.
4. Consistent with applicable law, the **STATE** may impose such reasonable sanctions as it may deem appropriate for non-compliance with the provisions of this **FRANCHISE**. For examples and not by way of limitation, the **STATE** may impose lesser sanctions such as not issuing new permits to the **UTILITY**; or issue the immediate stop work order on any active utility construction within the **STATE** right-of-way until the **UTILITY** complies; or the suspension of this **FRANCHISE** until the non-compliance is corrected; or other measures as stated in the **UTILITY MANUAL**.
5. The **STATE** may revoke this **FRANCHISE** after 60 days written notice to the **UTILITY** of material non-compliance with this Agreement and opportunity to cure, provided that in the event that such cure requires more than 60 days to complete, this **FRANCHISE** shall remain valid so long as **UTILITY** promptly begins to effectuate such cure and diligently prosecutes such cure until completion. In the event of revocation of this **FRANCHISE** Agreement, the **STATE** may seek a Court Order to appoint a trustee to administer the **UTILITY'S** assets located within the State's roadway rights-of-way until the non-compliance is corrected or such time as the **UTILITY'S** facilities, fixtures, assets, and appurtenances are removed from the **STATE'S** roadway rights-of-way. The **STATE** will bear no cost for such removal; the cost shall be borne by the **UTILITY**. This section is not to be construed as placing any limitation upon either the **UTILITY** or the **STATE** to pursue any other legal or equitable remedy available to it for a breach of the conditions of this **FRANCHISE**.

This **FRANCHISE** may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument. Facsimile or pdf signatures shall be deemed original signatures.

The signature of the undersigned constitutes the **STATE’S** consent to and endorsement of the provisions of this **FRANCHISE**. An official signature of the representative for the **UTILITY** when affixed hereinafter shall constitute agreement to the terms and conditions herein.

ATTEST:

**APPROVED FOR THE
DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS**

Charlanne Clymer
Director, Finance

Monroe Hite, III
Chief, Transportation Solutions R-O-W

Date Department Seal Affixed

ATTEST:

**APPROVED FOR THE UTILITY
"ENTER UTILITY"**

**"ENTER NAME"
"ENTER TITLE"**

STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION
USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT, executed in triplicate, made this _____ day of _____, by and between _____, a Delaware corporation, with offices at _____, hereinafter referred to as “_____,” and the DEPARTMENT OF TRANSPORTATION, a Department of the State of Delaware, hereinafter referred to as the “DEPARTMENT,”

WITNESSETH:

WHEREAS, _____ desires to construct and install a _____, to be located in the State's right of way located across Public Road No. _____ to run a distance of R/W _____ feet, plus or minus, beginning at _____ and ending at _____ as shown on Drawing No. _____ attached hereto as Exhibit A, and made a part hereof; and,

WHEREAS, the DEPARTMENT has the authority to enter into this AGREEMENT pursuant to the provisions of Title 17, Delaware Code, Section 132 (d), as amended; and

WHEREAS, the location of said _____ is both described and necessary and will not restrict the use of said road by the public;

NOW, THEREFORE, in consideration of the promises and the terms and conditions hereinafter set forth, the parties agree as follows:

1. That _____ shall be permitted to construct, renew, relocate, replace, maintain, and operate a _____ together with the necessary fixtures and appurtenances across Public Road No. _____ in the manner indicated on said Drawing No. _____ dated _____. The installation will adhere to the standards as set forth in Department Utilities Manual. If a utility fails to comply with any of the conditions, restrictions or regulations prescribed by DelDOT, action will be taken as specified in the Utilities Manual.

2. _____ agrees to indemnify and save harmless the DEPARTMENT of and from all suits and damages arising from or on account of the construction or operation of said _____.

3. Whenever in the reasonable judgment of the DEPARTMENT said _____ constitutes an unreasonable interference with the use of said road or with any modification, enlargement, or alteration of said road, _____ agrees upon reasonable notice from the DEPARTMENT to relocate such _____ at its sole cost and expense.

4. The construction of said _____ shall be conducted so as to interfere as little as possible with the traffic along said road. Necessary barricades, suitable and sufficient red lights, danger signals, and/or signs shall be provided for the protection and safety of the public. Placement of temporary traffic control devices shall adhere to the standards as set forth in the Department Traffic Control Manual.

5. When the construction of the _____ has been completed, all existing roadway, shoulder, or other facilities disturbed by construction shall be replaced and an appropriate sign shall be placed identifying the type of installed facility.

_____ agrees:

a. That any damage to the roadway caused during or after the installation of the said _____ attributable to the installation of _____ shall be the sole responsibility of _____.

b. To place and permanently maintain in place, on a suitable post, a sign which shall be furnished by the DEPARTMENT. The sign shall identify the type of underground facility installed in accordance with the color coding described in Chapter 8 of Title 26 of the Delaware Code, entitled "Underground Utility Damage Prevention and Safety."

6. It shall be the sole responsibility of the DEPARTMENT's representative to inspect the completed facility and ensure that the sign has been placed properly and on a permanent basis.

7. _____ shall obtain permission of the DEPARTMENT prior to making any other use of the _____ other than that for the transmission of _____.

8. The DEPARTMENT reserves the right to change the terms of this AGREEMENT providing that the terms of the AGREEMENT will in no case be more burdensome to _____ than are the terms to any other non-public corporation under similar circumstances.

9. When duly executed, this AGREEMENT shall be binding upon the parties hereto and their successors and assigns.

10. This AGREEMENT is for a period of 20 years with _____
_____ having the option to renew for additional periods of 20 years and 10
years respectively, making a total possible period of 50 years from the effective date of the AGREEMENT,
which is the date first above written.

IN WITNESS WHEREOF, each party hereto has caused this AGREEMENT to be executed in triplicate in its
name and behalf by its duly authorized officer, as of the day and year first above written.

BY:

Signature and Title

Sworn to and subscribed before me this _____ day of _____, 20 ____.

Notary Public

My commission expires:

Attest:

Department of Transportation

PUBLIC WORKS ENGINEER

BY: _____
(_____) DISTRICT ENGINEER

DATE: _____